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IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DAVID DAVIS and PAGE GEARHART-DAVIS PRO-SE, Plaintiffs, vs. CLEARLAKE POLICE DEPARTMENT, Defendants.	Case No. C 07-03365 EDL DEFENDANT CITY OF CLEARLAKE'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES (F.R.C.P. 56) Date: August 12, 2008 Time: 9:00 a.m. Courtroom: E, 15th Floor Judge: Hon. Elizabeth D. LaPorte

TO THE COURT AND *PRO SE* PLAINTIFFS DAVID DAVIS AND PAGE GEARHART-DAVIS:

NOTICE IS HEREBY GIVEN that on August 12, 2008, at 9:00 a.m., in Courtroom E of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California, defendant CITY OF CLEARLAKE (the "City") will, and hereby does, move the Court for an order granting summary judgment on the grounds that there is no genuine issue of material fact as to all of plaintiffs DAVID DAVIS and PAGE GEARHART-DAVIS's ("Plaintiffs") claims against it, and the City is entitled to judgment as a matter of law. In the alternative, the City moves for an order granting partial summary

judgment on the issue that any one or more of Plaintiffs' claims for relief or prayers for recovery against it have no merit as a matter of law and should therefore be dismissed.

This motion is based on this notice, on the Memorandum of Points and Authorities below, on the Declaration of Dirk D. Larsen filed herewith and the exhibits attached thereto, on the Declaration of Lt. Michael Hermann filed herewith and the exhibits attached thereto, on the Declaration of Officer Todd Miller filed herewith, on the Declaration of Officer Timothy Hobbs filed herewith, and on any oral and/or documentary evidence that may be presented at the hearing of this motion.

STATEMENT OF RELIEF SOUGHT

The City hereby moves the Court for an order granting summary judgment in its favor on the grounds that there is no genuine issue of material fact as to all of Plaintiffs' claims for relief against it, and the City is thus entitled to judgment as a matter of law. Construing Plaintiffs' First Amended Complaint ("FAC") to yield properly pleaded claims, these claims for relief are: (1) conspiracy against the rights of citizens in violation of 18 U.S.C. § 241; (2) deprivation of rights under color of law in violation of 18 U.S.C. § 242; (3) violation of civil rights under 42 U.S.C. § 14141; (4) conspiracy to interfere with civil rights, brought pursuant to 42 U.S.C. § 1985; (5) violation of the right to be free from unreasonable search and seizure, as guaranteed by the Fourth Amendment, brought pursuant to 42 U.S.C. § 1983; (6) violation of the right to be free from excessive force, as guaranteed by the Fourth Amendment, brought pursuant to 42 U.S.C. § 1983; (7) violation of the right to be free from false arrest, as guaranteed by the Fourth Amendment, brought pursuant to 42 U.S.C. § 1983; (8) deprivation of liberty without due process of law, in violation of Fourteenth Amendment rights, brought pursuant to 42 U.S.C. § 1983; (9) violation of civil rights by means of municipal inaction through failure to investigate complaints properly, brought pursuant to 42 U.S.C. § 1983 under the *Monell* doctrine; and (10) violation of civil rights by means of failure to supervise officers adequately, brought pursuant to 42 U.S.C. § 1983 under the *Monell* doctrine. Plaintiffs also seek punitive damages and equitable relief.

In the alternative, the City moves for an order granting partial summary judgment on the issue that any one or more of Plaintiffs' claims for relief or prayers for recovery against it have no merit as a matter of law and should therefore be dismissed.

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I. STATEMENT OF ISSUES TO BE DECIDED

The present motion presents the following issue for decision: (1) whether Plaintiffs can, as a matter of law, sustain any claim against the City on the theory that the City has a custom, policy or practice amounting to deliberate indifference toward Plaintiffs' constitutional rights, whether through failure to investigate complaints properly or inadequate training of its officers (42 U.S.C. § 1983 claims); (2) whether the City is entitled to judgment as a matter of law as to Plaintiffs' claim for violation of 18 U.S.C. § 241; (3) whether the City is entitled to judgment as a matter of law as to Plaintiffs' claim for violation of 18 U.S.C. § 242; (4) whether the City is entitled to judgment as a matter of law as to Plaintiffs' claim for violation of 42 U.S.C. § 14141; (5) whether the City is entitled to judgment as a matter of law as to Plaintiffs' claim for violation of 42 U.S.C. § 1985; (6) whether Plaintiffs may recover punitive damages from the City, a municipal entity; and (7) whether Plaintiffs may be awarded the injunctive relief they seek.

Because an element of any of Plaintiffs' § 1983 claims (issue (1), above) is a showing that the City's officers violated Plaintiffs' constitutional rights, this Memorandum of Points and Authorities addresses each violation that Plaintiffs allege.

II. INTRODUCTION

This lawsuit arises out of a number of encounters Plaintiffs had with officers of the Clearlake Police Department between August 2, 2006 and January 17, 2007. All but one of those encounters were investigatory or traffic stops, and Plaintiffs have conceded facts giving rise to the respective officers' reasonable suspicion for making each stop. The August 3, 2006 traffic stop led to an arrest of Plaintiff David Davis for failing to wear a seatbelt and failing to produce photo identification, failures that Mr. Davis concedes. During this detention, Mr. Davis was briefly handcuffed, but then released once he began exhibiting symptoms of asthma. The only encounter that was not an investigatory or traffic stop involved a 911 hang-up call received from Plaintiffs' residence. The City's officers responded to the residence, quickly determined that police intervention was not necessary, and departed.

Plaintiffs complained about these encounters to the Clearlake Police Department, which conducted full investigations resulting in the exoneration of the officers involved. In their First Amended Complaint ("FAC"), Plaintiffs allege that these encounters represent harassment motivated by

racial profiling and/or retaliation (David Davis is African-American; Page Davis is Caucasian in appearance, but the City has no information regarding her ethnicity). However, they have not produced any evidence that the City's officers harbored any such improper motive. Instead, they have testified to a number of proper bases for the encounters and detentions, including driving unregistered vehicles, failing to use a turn signal, driving with a defective windshield, failing to wear helmets while riding a motorcycle, failing to wear a seatbelt in a vehicle, and failing to produce photo identification when cited with a Vehicle Code violation. Because the City's officers had the requisite reasonable suspicion or probable cause to detain Plaintiffs in every instance, and because they conducted the detentions in a reasonable manner, no constitutional violations occurred. Given the legitimate bases for the encounters, these stops do not represent the pattern of harassment that Plaintiffs allege, but merely the officers' attempt to enforce the law in the City of Clearlake.

Plaintiffs have named the City as a defendant in this action but none of the individual officers involved in the encounters. Accordingly, even if Plaintiffs could demonstrate that the officers violated their constitutional rights, Plaintiffs cannot sustain any § 1983 claim in this suit absent a showing that a City custom, policy or practice amounting to deliberate indifference to Plaintiffs' rights was the moving force behind the purported violations. Here, Plaintiffs have not only failed to produce evidence of a single constitutional violation, they have also not produced any evidence of such a custom, policy or practice. Accordingly, the City is entitled to judgment as a matter of law as to Plaintiffs' claims brought pursuant to 42 U.S.C. § 1983.

The City is also entitled to judgment as a matter of law as to Plaintiffs' claims brought pursuant to other civil rights statutes. Those statutes either do not provide for private rights of action, or they base liability on the existence of a conspiracy—a legal impossibility here, as the City cannot conspire with itself.

Plaintiffs seek to recover punitive damages from the City, and they request injunctive relief in the form of criminal prosecutions of the officers and an investigation of the Clearlake Police Department. They are entitled to neither type of relief. Municipal entities such as the City are immune from punitive damages under both federal and state law. With respect to the injunctive relief—even assuming the measures Plaintiffs request were properly tailored to the alleged wrongs—Plaintiffs may not recover

such relief because, by their own admission, they suffer no continuing wrongs that the measures could remedy.

III. STATEMENT OF RELEVANT FACTS

Plaintiffs began residing in the City of Clearlake in autumn of 2005. (Deposition of David Davis, Exhibit 2 to Declaration of Dirk D. Larsen ["Ex. 2"] at 20:8-21:5.) Between that time and August 1, 2006, David Davis had two encounters with officers of the Clearlake Police Department. (Ex. 2 at 23:9-24:17.) In the first encounter, a man ran across the street into Mr. Davis's vehicle, which was traveling down Lakeshore Boulevard. (Ex. 2 at 23:17-25.) Sgt. Timothy Celli and a few other officers arrived at the scene, and Mr. Davis was found not to be at fault for the incident. (Ex. 2 at 23:17-25.) In the second encounter, an officer Mr. Davis cannot recall pulled him over and gave him a warning for playing music at an excessive volume. (Ex. 2 at 24:1-20.) Neither of these encounters forms a basis for Plaintiffs' allegations in the present matter.

On August 2, 2006, Plaintiffs were pumping gas into their 1967 Mercury Cougar when they were approached by Sgt. Celli and Officer Todd Miller. (Ex. 2 at 25:11-28:18.) The windshield of Plaintiffs' vehicle contained a crack about seven inches in length. (Ex. 2 at 44:18-45:2.) At the officers' request, Mr. Davis provided them with his driver's license, proof of insurance, and "proof that the vehicle was ... in the process of being registered." (Ex. 2 at 26:2-8.) The license Mr. Davis provided was a temporary license. (Ex. 2 at 40:11-25.) The vehicle was not actually registered at that time; the registration had expired. (Ex. 2 at 41:1-42:4.) One officer began looking through the windows of Plaintiffs' vehicle, but did not enter the vehicle, and Mr. Davis and the officers began a "verbal exchange," in which Mr. Davis called Officer Miller "an out of shape pig." (Ex. 2 at 30:19-31:6, 53:17-54:6; Clearlake Police Department Citizen's Personnel Complaint of August 3, 2006, Exhibit A to Declaration of Lt. Michael Hermann ["Ex. A"] at 3.) Officer Miller responded to Mr. Davis that "we don't like your kind here," at which point "a bunch of bickering and nagging" ensued. (Ex. 2 at 27:18-22, 31:3-6.) Officer Miller clarified that his statement referred to individuals with confrontational attitudes toward law-enforcement personnel, not to persons of any particular race or ethnicity. (Declaration of Officer Todd Miller ["Miller Dec."], ¶ 3) The officers issued Mr. Davis a citation for operating a vehicle without valid registration and with a cracked windshield. (Ex. 2 at 39:22-24.) Neither officer directed any racially

derogatory terms toward Plaintiffs, and Plaintiffs did not hear the officers use such terms in reference to them. (Ex. 2 at 46:24-50:17.)

The following morning, Plaintiffs spoke to Clearlake Police Captain Ron Larsen regarding the incident of August 2, 2006. (Ex. 2 at 55:7-9.) Captain Larsen informed Plaintiffs that he would speak to the officers involved. (Ex. 2 at 55:14-17.)

On August 3, 2006, at approximately 1:00 a.m., Plaintiffs were pulled over by Clearlake Police Officers Timothy Hobbs and Sarah Hardisty for failure to stop at a stop sign. (Ex. 2 at 56:16-59:8; Clearlake Police Department Traffic Stop Report # 62456, Exhibit C to Hermann Dec. ["Ex. C"], at 1.) They were traveling in a Chevrolet Suburban—not the Mercury Cougar from the previous evening—and Ms. Davis was driving. (Ex. 2 at 58:3-10.) The Suburban was not registered. (Deposition of Page Gearhart-Davis, Exhibit 3 to Larsen Dec. ["Ex. 3"] at 38:8-10.) Mr. Davis was not wearing a seatbelt. (Ex. 2 at 60:17-20.) After noting the Mr. Davis was not wearing a seatbelt, Officer Hobbs asked him for identification. (Ex. 2 at 60:21-23.) Mr. Davis provided Officer Hobbs with an interim driver's license, which was not a photo identification. (Ex. 2 at 60:23-62:10.) Officer Hobbs informed Mr. Davis that he would be detained, and was under arrest, for failing to produce proper identification. (Ex. 2 at 62:11-13, 64:14-16.) Mr. Davis exited the Suburban and, upon Officer Hobbs' command, turned around for Officer Hobbs to place his hands in handcuffs. (Ex. 2 at 63:1-64:7.) Mr. Davis claims that the handcuffs were too tight, cutting into his wrists. (Ex. 2 at 64:8-10.) Officer Hobbs placed Mr. Davis in the rear seat of his patrol vehicle. (Ex. 2 at 65:1-6.) At that point, Mr. Davis began suffering an asthma attack, and he yelled out that he was having difficulty breathing. (Ex. 2 at 65:7-66:21.) Officer Hobbs called for an ambulance. (Declaration of Officer Timothy Hobbs ["Hobbs Dec."], ¶ 3.) According to Mr. Davis, Officer Hobbs pulled Mr. Davis from the patrol vehicle onto the ground, placed his knee in Mr. Davis's back in order to remove the handcuffs, and "the next thing [Mr. Davis] knows," removed the handcuffs. (Ex. 2 at 66:19-69:19.) Mr. Davis lay on the ground for five or ten minutes and then noticed that Sgt. Celli and an ambulance had arrived at the scene. (Ex. 2 at 72:3-21.) Mr. Davis refused treatment from the paramedics. (Ex. 2 at 72:14-21.) None of the officers at the scene directed any racial slurs toward Plaintiffs that night. (Ex. 2 at 76:1-17.)

On August 3, 2006, Mr. Davis filed a Citizen's Personnel Complaint with the Clearlake Police

Department based on the incidents of the two previous evenings. (Ex. A.) In that complaint, Mr. Davis acknowledged that, on August 2, 2006, he called Officer Miller an "out of shape pig" before Officer Miller stated that "we don't like your kind of people here." (Ex. A at 3.) Clearlake Police Captain Ron Larsen conducted the investigation arising from this complaint, which consisted of interviews of Mr. Davis, Sgt. Celli, Officer Miller, Officer Hardisty and Officer Hobbs. (Clearlake Police Department Internal Affairs Investigation # 08-03-06/90/107/132/145, Exhibit B to Hermann Dec. ["Ex. B"].) On August 29, 2006, Captain Larsen determined that Mr. Davis's allegations were unfounded; the officers were thus exonerated from any misconduct or wrongdoing. (Ex. B at 1.)

On September 27, 2006, Officer Hobbs issued both Plaintiffs a citation for riding an unregistered motorcycle, riding without helmets, and littering. (Ex. 2 at 83:6-85:1.) Sgt. Celli arrived at the scene shortly after Officer Hobbs stopped Plaintiffs. (Ex. 2 at 84:5-6.) Plaintiffs were found guilty of the infractions relating to this incident and fined over $1,200.00. (Ex. 2 at 83:20-84:4, 85:16-86:4.)

Ms. Davis testified that she observed Sgt. Celli drive by their home more than five times a week between August and December, 2006. (Ex. 3 at 45:18-46:7.) Mr. Davis is unable to recall precisely how many times he observed Sgt. Celli drive by their home in that period, other than to state that it was "numerous." (Ex. 2 at 103:3-105:6.)

On December 27, 2006, Officer Joseph Labbe and Sgt. Celli stopped Plaintiffs, who were traveling in a van, for driving with an obstructed license plate and failing to use a turn signal. (Ex. 2 at 89:17-94:1.) Ms. Davis was driving, and Mr. Davis was a passenger. (Ex. 2 at 89:17-90:3.) Mr. Davis stated that he did not think a turn signal was necessary. (Ex. 2 at 93:17-24.) Plaintiffs claim that Sgt. Celli approached the passenger side of the vehicle with his hand on his gun, although he did not remove the gun from his holster. (Ex. 2 at 91:7-8, 96:13-19.) The van in which they were traveling was not registered. (Ex. 2 at 94:4-14.) Ms. Davis was issued a citation for driving an unregistered vehicle and driving without proof of insurance. (Ex. 2 at 94:2-14.) Neither officer directed any racial slurs towards either Plaintiff during this encounter. (Ex. 3 at 43:18-22.)

On January 12, 2007, Plaintiffs filed a Citizen's Personnel Complaint against Sgt. Celli for "racial profiling, abuse of authority, excessive ticket writing, manipulation of staff, falsifying reports, and hate crimes." (Clearlake Police Department Citizen's Personnel Complaint of January 12, 2007,

Exhibit D to Hermann Dec. ["Ex. D"] at 1.) This complaint arose out of the incidents between August 3, 2006, and December 27, 2006. (Ex. D at 1.) Then-Sgt. Michael Hermann conducted the investigation, which consisted of interviews with both Plaintiffs, Officer Labbe and Sgt. Celli. (Clearlake Police Department Internal Affairs Investigation # 01-12-07/90, Exhibit E to Hermann Dec. ["Ex. E"].) On January 22, 2007, the Department reached the conclusion that the complaint was unfounded, meaning that Sgt. Celli committed no misconduct. (Ex. E at 6.)

On January 17, 2007, Sgt. Celli and another officer responded to a 911 hang-up call from Plaintiff's residence. (Ex. 2 at 107:20-110:24; County of Lake E911 ALI Report, Exhibit F to Hermann Dec. ["Ex. F"].) Sgt. Celli did not direct any racial slurs toward Plaintiffs, and did not behave in a threatening manner other than, in Mr. Davis's view, to come to Plaintiffs' home. (Ex. 2 at 108:19-109:8, Ex. 3 at 45:15-17.) The other officer explained that they had received a 911 call from that house. (Ex. 3 at 44:19-45:2.) According to Ms. Davis, Sgt. Celli stayed behind the bushes in front of the house and determined that there was no need for police intervention. (Ex. 3 at 45:3-6.)

Plaintiffs organized monthly meetings with the community of Clearlake from September 2006 through January 2007. (Ex. 2 at 111:16-112:11.) They allege that, during those meetings, other people complained about the Clearlake Police Department. (Ex. 2 at 112:13-16.) However, Plaintiffs have not produced any evidence with respect to those complaints. Plaintiffs also allege that the Department of Justice became involved in the meetings, but they do not know the outcome of any investigation. (Ex. 2 at 113:15-114:13.) In addition, Plaintiffs allege that former employees of the City of Clearlake have complained about the police department, but they have not produced any evidence with respect to such complaints. (Ex. 2 at 116:21-121:18.)

Plaintiffs have had no further encounters with Clearlake Police Officers after January 30, 2007. (Ex. 2 at 126:13-127:22; Ex. 3 at 49:4-50:2.)

In their FAC, Plaintiffs seek to recover punitive damages from the City as well as the following injunctive relief: "[a]ny officers to be found guilty of any civil or criminal charges to be prosecuted[,]" and "[c]onduct a full investigation into the Clear Lake [sic] Police Department and Employees (past and present.)" (FAC at 9:13-22.)

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IV. ARGUMENT

A. Standard of Review.

Summary judgement should be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." F.R.C.P. 56(c). It pierces the pleadings and puts the opponent to the test of affirmatively coming forward with sufficient evidence for its claims to create a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In order to meet its initial burden, "the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

In opposing a motion for summary judgment, the adverse party "may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." F.R.C.P. 56(e). In the absence of such a response, "summary judgment, if appropriate, shall be entered against the adverse party." *Id.*

B. Plaintiffs' 42 U.S.C. § 1983 Claims Against the City Have No Merit as a Matter of Law.

Plaintiffs appear to bring a number of 42 U.S.C. § 1983 claims against the City. Section 1983 provides a private right of action for deprivation of federal rights under color of state law. Based on the allegations in the FAC, Plaintiffs appear to allege the following deprivations on the part of the City's officers: (1) unreasonable search and seizure in violation of the Fourth Amendment arising from the incidents of August 2, August 3, September 27 and December 27, 2006 (FAC, ¶ 14); (2) excessive force in violation of the Fourth Amendment arising from the incident of August 3, 2006 (FAC, ¶¶ 15, 16); (3) false arrest of David Davis in violation of the Fourth and Fourteenth Amendments (FAC, ¶ 16); (4) selective, racially motivated enforcement of the law in violation of the Equal Protection Clause of the Fourteenth Amendment (FAC, ¶ 16); and (5) deprivation of the liberty to leave their home in violation of

the Due Process Clause of the Fourteenth Amendment (FAC, ¶ 15).[1] Plaintiffs also allege two § 1983 causes of action against the City itself: (1) failure to investigation citizen complaints properly and (2) failure to supervise officers adequately. (FAC, ¶¶ 17-18.)

A municipal entity cannot be held liable for unconstitutional acts of its officers based solely on the doctrine of respondeat superior. *Monell v. Dept. of Social Svcs. of City of New York*, 436 U.S. 658, 694 (1978). A municipality may be held liable for an official policy or informal custom that led to the unconstitutional acts. *Id.* at 690-94. Moreover, the municipality's custom, policy, practice, or deliberately indifferent training, supervision or hiring must actually be the cause of the deprivation of the plaintiff's federal rights; it must be the "moving force" behind the employees' conduct resulting in the deprivation. *Board of County Com'rs of Bryan County v. Brown*, 520 U.S. 397, 404 (1997). It follows that, where no City employee caused a constitutional deprivation, the City itself cannot be held liable for a custom or policy causing the purported deprivation. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986).

Plaintiffs' allegations that the City failed to act by failing to investigate complaints properly and failed to supervise its officers adequately are governed by the standards set forth in *City of Canton v. Harris*, 489 U.S. 378 (1989). *See Davis v. City of Ellensburg*, 869 F.2d 1230, 1235 (9th Cir. 1989) (holding that *City of Canton*'s "inadequate training" standard also applies to allegations of inadequate supervision); *see Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (applying *City of Canton*'s test to allegations of municipal inaction). Under *City of Canton*'s standard, the City may only be held liable if Plaintiffs establish (1) that they possessed a constitutional right of which they were deprived; (2) that the City had a policy amounting to "deliberate indifference" to their constitutional right; and (3) that the policy was the "moving force" behind the constitutional violation. *See Oviatt*, 954 F.2d at 1474 [citing *City of Canton*, 489 U.S. at 389-391]. Accordingly, under both *Monell* and *City of Canton*, Plaintiffs must first establish that they were deprived of a constitutional right before municipal liability may attach.

As discussed in the following subsections, no City employee deprived Plaintiffs of any constitutional right, thus precluding liability on the part of the City. Moreover, Plaintiffs have produced

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[1]The FAC also contains an allegation that a City officer forged David Davis's name on a traffic citation, but Plaintiffs have withdrawn this allegation. (FAC, ¶¶ 10, 16; Ex. 2 at 81:10-25.)

no evidence that the City's investigation and supervision policies or practices amounted to "deliberate indifference" to Plaintiffs' constitutional rights.

1. Because the City's Officers Had Reasonable Suspicion to Detain Plaintiffs on the Dates in Question, Their Conduct Did Not Constitute Unreasonable Searches and Seizures in Violation of the Fourth Amendment.

The Fourth Amendment to the U.S. Constitution states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated... ." U.S. Const., Amend. IV. The Amendment does not prohibit all searches and seizures by government officials, but only unreasonable ones. *Terry v. Ohio*, 392 U.S. 1, 9 (1968). A seizure occurs when a police officer restrains an individuals freedom to walk away, even if no arrest is made. *Id.* at 16. But such a detention is not unreasonable—and thus does not violate the individual's Fourth Amendment rights—where the officer "can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *See id.* at 21. In other words, an officer may briefly detain an individual if the officer has "reasonable suspicion" that the individual "has committed, is committing or is about to commit a crime." *U.S. v. Choudhry*, 461 F.3d 1097, 1100 (9th Cir. 2006) (citing *U.S. v. Lopez-Soto*, 205 F.3d 1101, 1104 (9th Cir. 2000).) *Terry*'s "reasonable suspicion" test applies whether officers detain the individual in question in public, as the driver of a vehicle, or as a passenger in a vehicle. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979); *see Brendlin v. California*, 551 U.S. ___, 127 S.Ct. 2400, 2406-2408 (2007).

Here, on every occasion on which the City's officers detained Plaintiffs, those officers had specific and articulable facts justifying the intrusion, namely, that one or both Plaintiffs had committed, or were about to commit, a traffic infraction. On August 2, 2006, Plaintiffs were detained while pumping gasoline into a vehicle with a visibly cracked windshield, in violation of California Vehicle Code § 26710, and their vehicle did not exhibit valid registration. (Ex. 2 at 41:1-42:4, 44:18-45:2.) On August 3, 2006, officers stopped Plaintiffs for failing to stop at a stop sign and driving a vehicle that did not exhibit valid registration. (Ex. 2 at 56:16-59:8; Ex. 3 at 38:8-10; Ex. C at 1.) In addition, once the officers approached the vehicle, they observed that David Davis was not wearing a seatbelt. (Ex. 2 at 60:17-20.) On September 27, 2006, Plaintiffs were cited for riding an unregistered motorcycle without helmets and for littering—again, infractions that the officers observed without unreasonable intrusion on

Plaintiffs' privacy. (Ex. 2 at 83:6-86:4.) Plaintiffs were fined for these infractions. (Ex. 2 at 83:20-84:4, 85:16-86:4.) Finally, on December 27, 2006, the officers stopped Plaintiffs for failing to use a turn signal, and then noted that the vehicle was unregistered. (Ex. 2 at 89:17-94:1, 94:4-14.) Plaintiffs concede both the failure to use the turn signal and the lack of valid registration. (Ex. 2 at 89:17-94:1, 94:4-14.) Accordingly, in every instance in which Plaintiffs were detained, the City's officers had reasonable suspicion to justify the detention. The officers' actions were thus not only reasonable under the Fourth Amendment, but also lawful and proper in that they constituted attempts to cite and deter violations of the law.

2. Officer Hobbs Applied Reasonable Force to David Davis and Thus Did Not Violate Mr. Davis's Rights under the Fourth Amendment.

Plaintiffs' allege that "Clearlake Police Department officers used excessive force when detaining David Davis in violation of the Forth [sic] and Fourteenth Amendments to the United States Constitution." (FAC, ¶ 16.) Because the incident of August 3, 2006, is the only time any officer is alleged to have applied force to Mr. Davis, Plaintiffs are presumably referring to this date. On that evening, Officer Hobbs handcuffed Mr. Davis, placed him in the patrol vehicle, and immediately removed the handcuffs once Mr. Davis began experiencing symptoms of asthma. (Ex. 2 at 63:1-64:7, 65:1-6; Hobbs Dec., ¶ 3.)

"[*A*]*ll* claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than a 'substantive due process' approach." *Graham v. Connor*, 490 U.S. 386, 395 (1989) (emphasis in original). A seizure occurs when an "officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Terry* 392 U.S. at 19, n.16. Because the alleged use of force occurred in the course of an investigatory traffic stop, the Fourth Amendment's "reasonableness" standard applies. Accordingly, Plaintiffs' claim of excessive force must be analyzed under this standard.

Under the objective reasonableness standard, "[d]etermining whether the force used to effect a particular seizure is 'reasonable' ... requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at

stake." *Graham*, 490 U.S. at 396 (internal citations omitted). The officer's conduct must be evaluated in light of the particular circumstances "from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight." *Id.* at 396-397. The standard does not require police officers to use the "least intrusive means of responding to an exigent situation; they need only act within the range of conduct [the law identified] as reasonable." *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994), *cert. denied*, 515 U.S. 1159 (1995). The question of reasonableness of force is usually a question for the jury, but the court may make a determination on summary judgment where, viewing the evidence in the light most favorable to the non-moving party, the evidence compels the conclusion that the use of force was reasonable. *Hopkins v. Andaya*, 958 F.2d 881, 885 (9th Cir. 1992) (overruled on other grounds as recognized in *Federman v. County of Kern*, 61 Fed.Appx. 438, 440 (9th Cir. 2003)).

Here, Officer Hobbs handcuffed Mr. Davis only after observing that Mr. Davis was not wearing a seatbelt, in violation of California Vehicle Code § 27315(e). In addition, Mr. Davis failed to produce photo identification, thus justifying the further detention under California Vehicle Code § 40302(a).[2] Officer Hobbs took Mr. Davis's hands and placed them in handcuffs. (Ex. 2 at 63:1-64:7.) Mr. Davis testified that the handcuffs were excessively tight, cutting into his wrists. (Ex. 2 at 64:8-10.) However, he also testified that Officer Hobbs removed the handcuffs once he began exhibiting symptoms of an asthma attack, which started when he was placed into the police vehicle. (Ex. 2 at 65:7-66:21, 66:19-69:19.) Officer Hobbs pulled Mr. Davis from the vehicle onto the ground and placed his knee into Mr. Davis's back, but only in order to remove the handcuffs. (Ex. 2 at 66:19-69:19.) In addition, Officer Hobbs called for an ambulance in response to Mr. Davis's asthma symptoms.

In *Hupp v. City of Walnut Creek*, 389 F.Supp.2d 1229 (N.D. Cal. 2005), the court granted summary judgment to defendant police officers who were alleged to have applied excessive force in a

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[2]California Vehicle Code § 40302 states, in relevant part:

> Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:
>
> (a) When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination.

cuffing procedure following an arrest for failure to wear a seatbelt. The *Hupp* court noted that the officers twice loosened the handcuffs upon the plaintiff's complaints, and that the plaintiff produced no evidence—other than his subjective complaints—that the handcuffs caused physical injury. *Id.* at 1232. *Hupp* distinguished Ninth Circuit cases finding a possible Fourth Amendment violation where a doctor had testified that the arrestee suffered nerve damage, where an officer refused to loosen handcuffs following the arrestee's complaint, and where the arrestee's wrists were discolored and the officer ignored the arrestee's complaint. *Id.* (distinguishing *Wall v. County of Orange*, 364 F.3d 1107, 1109-12 (9th Cir. 2004); *LaLonde v. County of Riverside*, 204 F.3d 947, 952, 960 (9th Cir. 2000); *Palmer v. Sanderson*, 9 F.3d 1433, 1434-36 (9th Cir. 1993).)

Like the officers in *Hupp*, and unlike those in the cases *Hupp* distinguishes, Officer Hobbs responded to Mr. Davis's physical complaints immediately. While, according to Plaintiffs' allegations, he did not immediately loosen the handcuffs, Mr. Davis's asthma attack began as soon Officer Hobbs placed him in the patrol vehicle—which itself occurred directly after the handcuffing—and Officer Hobbs responded by not only loosening the handcuffs but by removing them. (Ex. 2 at 65:7-69-19.) In addition, Officer Hobbs immediately called for paramedics to respond and treat Mr. Davis's symptoms. (Hobbs Dec., ¶ 3.) With respect to pulling Mr. Davis out of the vehicle and placing his knee in Mr. Davis's back, Officer Hobbs did so in order to remove Mr. Davis's handcuffs and thus alleviate his asthma symptoms. (*See* Ex. 2 at 66:19-69:19.) While Plaintiffs may argue that less intrusive means may have accomplished the same result, Officer Hobbs was not required to use the least intrusive means available, but merely reasonable means. (*See Scott*, 39 F.3d at 915.) Moreover, given Mr. Davis's breathing difficulties and handcuffed position, any other means—such as attempting to remove the cuffs while Mr. Davis was still in the vehicle, to stand him upright outside, or to lean him against the vehicle—may have prolonged the handcuff-removal process or subjected Mr. Davis to injury. Under these circumstances, Officer Hobbs exhibited serious concern for Mr. Davis's condition and took reasonable measures to ensure his well-being. This incident is thus materially distinguishable from those at issue in *Wall*, *LaLonde* and *Palmer* and, like the incident in *Hupp*, did not result in a violation of Mr. Davis's Fourth Amendment rights.

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3. Because the City's Officers Had Probable Cause to Arrest Plaintiff for Not Wearing A Seatbelt, the Arrest Did Not Constitute a False Arrest in Violation of the Fourth Amendment.

Plaintiffs' allege that the City's officers "false detained" Mr. Davis. (FAC, ¶ 16.) As discussed in section III(B)(1), *supra*, the investigatory detentions of August 2, August 3, September 27, and December 27, 2006, were all justified by reasonable suspicion that a crime was being or was about to be committed. To the extent Plaintiffs are referring to Mr. Davis's August 3, 2006 arrest for failure to wear a seatbelt, this arrest was justified by probable cause.

"If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001). Probable cause to arrest requires "the existence of facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person in believing that the suspect has committed, is committing, or is about to commit an offense." *U.S. v. Wesley*, 293 F.3d 541, 545 (9th Cir. 2002) (internal citations omitted). "[T]he existence of probable cause must be determined objectively from the facts and circumstances known to the officers at the time of the arrest." *Id.* at 546, n. 4 *(citing Whren v. U.S.*, 517 U.S. 806, 813 (1996)).

Here, the facts and circumstances known to Officer Hobbs at the time of the August 3, 2006 incident were that Plaintiff was riding in a vehicle without wearing a seatbelt, in violation of California Vehicle Code § 27315(e). Mr. Davis has conceded as much. (Ex. 2 at 60:17-20.) Officer Hobbs thus had well more than probable cause to believe that Mr. Davis committed a traffic offense, no matter how minor it may appear. Moreover, in both *Hupp* and *Atwater*, the officers' observation that the plaintiffs were not seatbelted justified the subsequent arrest and detention. *Hupp*, 389 F.Supp.2d at 1232; *Atwater*, 532 U.S. at 354. Accordingly, Officer Hobbs's arrest and detention of Mr. Davis for not wearing a seatbelt was supported by probable cause and thus did not violate Mr. Davis's Fourth Amendment rights.

4. Because Plaintiff's Have Produced No Evidence of Intentional Discrimination, Their Claim for Racial Profiling Fails as a Matter of Law.

Plaintiffs appear to allege that they have been victims of racial profiling at the hands of the City's officers. (FAC, ¶¶ 2, 16, and at 9:14.) They thus appear to be pleading a cause of action for selective

enforcement of the law in violation of the Equal Protection Clause of the Fourteenth Amendment. In *Snowden v. Hughes*, 321 U.S. 1, at 8 (1944), the U.S. Supreme Court stated:

> The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person ... [citations], or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself [citations]. But a discriminatory purpose is not presumed ... [citations] there must be a showing of 'clear and intentional discrimination'[.]

Accordingly, for Plaintiffs to sustain a claim for racial profiling in violation of the Equal Protection Clause, they would have to produce evidence of discriminatory intent on the face of the action—e.g., racial slurs or epithets—or evidence indicating such an intent through a showing that non-African-Americans are treated differently.

Plaintiffs have produced neither type of evidence here. Despite the allegations in the FAC, Plaintiffs have testified that the City's officers did not direct any racial epithets at them during any of their mutual encounters. (Ex. 2 at 46:24-50:17, 76:1-17, 108:19-109:8; Ex. 3 at 43:18-22.) Nor have they produced any other evidence—such as witness statements or officer testimony—indicating that racial animus played any role in these encounters. Plaintiffs may argue that Officer Miller's statement that "we don't like your kind here" exhibited the requisite discriminatory intent. However, not only does the statement itself lack any indication of specifically racial animus, but Officer Miller made it only after Mr. Davis had called him "an out of shape pig." Given this context and the complete absence of any other evidence supporting racial animus, the "your kind" in this statement simply meant that which Officer Miller attempted to explain to Mr. Davis: people exhibiting confrontational attitudes and disrespect toward law-enforcement officers. (Miller Dec., ¶ 3.)

Plaintiffs have also failed to produce any extrinsic evidence of a design on the part of the City's officers to favor one class—i.e., non-African-Americans—over African-Americans. They have not demonstrated that City officers do not cite or arrest non-African-Americans for driving unregistered vehicles, failing to stop at stop signs, failing to use turn signals, or failing to wear helmets on motorcycles or seatbelts in automobiles. Plaintiffs have also produced no evidence that City officers do

not respond to 911 hang-up calls from the residences of non-African-Americans. Accordingly, Plaintiffs have not only failed to produce evidence of the "clear and intentional discrimination" *Snowden* requires, they have failed to produce any evidence of racial discrimination at all. The City thus cannot be held liable for its officers alleged violation of Plaintiffs' equal protection rights.

5. Because Plaintiff's Have Produced No Evidence of Deprivation of Liberty, Their Claim for Violation of the Due Process Clause Fails as a Matter of Law.

In their cause of action for violation of the Fourteenth Amendment, Plaintiffs allege that they "were deprived of their liberty to leave their home during Sgt. Celli's shift [between August and December 2006] because of all the undue harassment which always occurred during his evening shift." (FAC, ¶ 15.) Plaintiffs appear to base this allegation on their encounters with City officers, described above, as well as on their testimony that Sgt. Celli drove by their home up to five times per week between August and December 2006. However, they have produced no evidence that they were deprived of the liberty to leave their home as free, law-abiding citizens are entitled to do.

With respect to their actual contacts with Clearlake Police Officers, Plaintiffs have only produced evidence that, when they violate the law, the officers cite and briefly detain them for the violation. As discussed in sections III(B)(1) and (2), *supra*, Plaintiffs concede to a violation of law giving rise to every encounter with the City's officers between August and December, 2006. Accordingly, while Plaintiffs may have been deprived of their liberty to violate the law with impunity, this liberty is not protected by the Due Process Clause of the Fourteenth Amendment.

With respect to Sgt. Celli allegedly driving by Plaintiffs' home, Plaintiffs have not produced any evidence that Sgt. Celli did so with an intent to confine them to their home. They do not claim that Sgt. Celli ever spoke to them on these occasions, attempted to do so, or even knew that Plaintiffs were home. In addition, they have produced no evidence that they ever attempted to leave their home on such an occasion, but were prevented by Sgt. Celli from doing so. Instead, Plaintiffs base the alleged deprivation of liberty on their own subjective fear, a fear resulting from encounters which themselves resulted from Plaintiffs' violations of the law. (*See* FAC, ¶ 15.) Moreover, in alleging a deprivation of their liberty, Plaintiffs are attempting to deprive Sgt. Celli and other City officers of the ability to perform their job by patrolling the streets of Clearlake. Because Plaintiffs have not produced any evidence that they were

actually deprived of their liberty to engage in lawful activities outside their home, they cannot sustain a claim against the City based on this supposed deprivation.

6. Plaintiffs Have Not Demonstrated That "Deliberate Indifference" on the Part of the City Resulted in the Alleged Constitutional Violations.

As discussed in the previous sections, Plaintiffs cannot demonstrate, as a matter of law, that any City officer deprived them of their federal rights. Accordingly, they cannot sustain a claim for municipal liability under *Monell*, *Canton* and *Heller*, all of which require a predicate constitutional violation. *See Monell*, 436 U.S. at 690-694; *see Heller*, 475 U.S. at 799; *City of Canton*, 489 U.S. at 389-391. However, even if Plaintiffs were able to produce evidence of a constitutional violation, they would still have to show that the violation resulted from a City custom or policy amounting to "deliberate indifference" to their federal rights. *City of Canton*, 489 U.S. at 388-389. A municipality exhibits such "deliberate indifference" only when the act or omission giving rise to the alleged constitutional violation "reflects a 'deliberate' or 'conscious' choice" on the part of the municipality, "where ...a deliberate choice to follow a course of action is made from among various alternatives by city policymakers[,]" and this choice reflects indifference to the constitutional rights of others. *Id.* at 389-391 (citations omitted).

Here, Plaintiffs have produced no evidence that City policymakers deliberately made a choice to follow a course of action reflecting indifference to their constitutional rights. They allege that the City failed to investigate citizen complaints properly, presumably because their own complaints were determined to be unfounded. (*See* FAC, ¶ 17.) However, those complaints were determined to be unfounded because, as discussed in the previous sections, no misconduct or constitutional violation occurred. (*See* Ex. B at 1; *see* Ex. E at 6.) Moreover, Mr. Davis was given the opportunity to relate his version of events as part of the Internal Affairs investigations triggered by his complaints. (*See* Ex. B at 3-4; see Ex. E at 1-4.)

Plaintiffs also allege that the Clearlake Police Department "does not monitor complaints filed against its officers as a means of detecting problems before they occur." (FAC, ¶ 18.) First, as discussed in the preceding sections, no "problems" in the form of constitutional violations occurred with respect to Plaintiffs. Instead, the City officers properly cited and detained Plaintiffs for violations that Plaintiffs themselves concede. Second, Plaintiffs have produced no evidence that the City does not monitor

complaints against its officers. On the contrary, the Clearlake Police Department conducted a full investigation of each of Plaintiffs' complaints. (*See* Ex. B, Ex. E.) That the results were—justifiably—not to Plaintiffs' liking does not amount to deliberate indifference to Plaintiffs' rights.

Even if Plaintiffs were able to show that any individual officer deprived them of their rights, this showing would not satisfy *City of Canton*'s "deliberate indifference" standard. *See Blankenhorn v. City of Orange*, 485 F.3d 463, 484-485 (9th Cir. 2007). The *Blankenhorn* plaintiff offered evidence that the City of Orange may not have trained a particular officer adequately with respect to the use of force. *Id.* at 484. The court held that, while such training may reflect negligence on the part of the municipal defendant, it did not amount to the "program-wide inadequacy in training" required for a showing of deliberate indifference. *Id.* at 484-485. Accordingly, even if Plaintiffs were able to show that the City inadequately supervised any single officer, and that this inadequate supervision resulted in a constitutional deprivation, this showing would be insufficient to hold the City liable under § 1983.

C. Because 18 U.S.C. §§ 241 and 242 Are Penal Statutes That Do Not Provide Private Rights of Action, Plaintiffs' Causes of Action Pursuant to Those Statutes Have No Merit as a Matter of Law.

Plaintiffs' first two causes of action are brought pursuant to 18 U.S.C. §§ 241[3] and 242[4],

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[3] 18 U.S.C. § 241 states:
If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured–

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

[4] 18 U.S.C. § 242 states:
Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives,

respectively. (FAC, ¶¶ 9-10.) These statutes provide only for criminal penalties for the violation of civil rights; they do not provide private rights of action. *See Moore v. Kamikawa*, 940 F.Supp. 260, 265 (D. Hawaii 1995). Accordingly, they do not provide bases for Plaintiffs' claims in this civil lawsuit. Moreover, § 241 prohibits only concerted action by "two or more persons." Here, the City is a single entity and thus a single "person." The City is thus entitled to judgment as a matter of law as to Plaintiffs' first two causes of action.

D. Because 42 U.S.C. § 14141 Does Not Provide a Private Right of Action, Plaintiffs' Cause of Action Pursuant to it Has No Merit as a Matter of Law.

Plaintiffs allege a cause of action for "violation of civil rights under the Law Enforcement Misconduct Statute, 42 U.S.C. § 14141." (FAC, ¶ 11.) That section provides:

> (a) Unlawful conduct
>
> It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.
>
> (b) Civil action by Attorney General
>
> Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

The statute specifically provides a right of action only by the Attorney General, in the name of the United States. It does not provide a private right of action. Accordingly, because Plaintiffs are private individuals, the City is entitled to judgment as a matter of law as to this cause of action.

E. Because the City is a Single Entity, It Cannot Be Liable for Conspiracy to Interfere with Civil Rights under 42 U.S.C. § 1985.

Plaintiffs allege a cause of action for conspiracy to interfere with civil rights pursuant to

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or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

42 U.S.C. § 1985. That section only prohibits violations committed by "two or more persons." (42 U.S.C. §§ 1985(1)-(3).) Here, the only named defendant is the City of Clearlake, a single entity. Because the City cannot consist of "two or more persons," § 1985 is inapplicable on its face to Plaintiff's allegations. Accordingly, the City is entitled to judgment as a matter of law as to this cause of action.

F. As a Matter of Law, Plaintiffs May Not Recover Punitive Damages from the City, a Public Entity.

In the FAC's prayer for relief, Plaintiffs' seek "[c]ompensation for punitive damages[.]" (FAC, at 9:13-16.) The City—the only named defendant—is a local governing body. Whether Plaintiffs construe their causes of action as federal or state claims, the City is immune from liability for punitive damages. Local governing bodies are immune from punitive damages in suits brought under 42 U.S.C. § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). And California Government Code § 818 provides, in pertinent part: "[n]otwithstanding any other provision of law, a public entity is not liable for ... damages imposed primarily for the sake of example and by way of punishing the defendant." Accordingly, Plaintiffs may not recover punitive damages from the City under any theory. Summary adjudication of this issue should thus be granted in the City's favor.

G. Because Plaintiffs Suffer No Continuing Wrongs, They Are Not Entitled to the Equitable Relief They Seek.

In the FAC's prayer for relief, Plaintiffs request the following equitable relief:

> (B) Any officers to be found guilty of any civil or criminal charges to be prosecuted.
>
> (C) Conduct a full investigation into the Clear Lake [sic] Police Department and Employees (past and present).

While equitable relief is available in lawsuits brought pursuant to 42 U.S.C. § 1983, the relief must actually be remedial, i.e., it must actually right the wrongs of which the plaintiffs complain. *See Milliken v. Bradley (Milliken II)*, 433 U.S. 267, 282 (1977). Common examples of § 1983 suits in which equitable relief is appropriate include school-desegregation and prison-condition cases. *See, e.g., id.*; *see, e.g., Hutto v. Finney*, 437 U.S. 678, 687 (1978).

Here, both Plaintiffs have testified that they have had no further contact with City of Clearlake Police Officers since January of 2007. (Ex. 2 at 126:13-127:22; Ex. 3 at 49:4-50:2.) Accordingly, even

if they had suffered wrongs at the officers' hands, they no longer do so. Any equitable relief—especially the overly broad relief Plaintiffs seek—would thus not remedy Plaintiffs' present situation, as Plaintiffs' present situation, by their own admission, does not require remedial action. Summary adjudication of this issue should thus be granted in favor of the City, and the prayers for equitable relief should be dismissed.

V. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court grant its motion for summary judgment and dismiss Plaintiffs' First Amended Complaint in its entirety with prejudice. In the alternative, the City respectfully requests that the Court grant its motion for partial summary judgment on the grounds that the City is entitled to judgment as a matter of law as to any one or more claims or prayers for relief against it, and requests that those claims or prayers for relief be dismissed with prejudice.

Dated: July 8, 2008.

LOW, BALL & LYNCH

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